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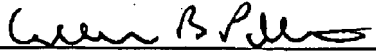
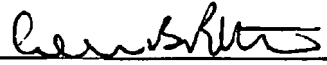
JUN 15 2007

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) WEAT/0275	
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		First Named Inventor David Alexander Russell	
		Art Unit 2856	Examiner Tamiko D. Bellamy
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>34,102</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number _____		<u></u> Signature <u>William B. Patterson</u> Typed or printed name <u>713-623-4844</u> Telephone number <u>June 15, 2007</u> Date	
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JUN 15 2007

In re Application of:
David Alexander Russell et al.

Serial No.: 10/675,863

Confirmation No.: 1881

Filed: September 30, 2003

For: METHOD OF DERIVING DATA

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Group Art Unit: 2856

Examiner: Tamiko D. Bellamy

Customer No. 36735

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REMARKS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

In conjunction with the Notice of Appeal filed herewith, Applicants request a Panel review of the Final Rejection in this matter. Although the remarks herein are focused on specific issues raised by the rejection, nothing in this paper is meant to limit the scope of any arguments, either factual or legal, that Applicants may later present in a full appeal brief.

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PATENT
Atty. Dkt. No. WEAT/0275**QUESTION FOR REVIEW**

Applicants request a pre-appeal brief conference review to address the factual deficiency in making the anticipation and obviousness rejections. In a Final Office Action dated February 16, 2007, the Examiner finally rejected all pending claims under § 102(b) or § 103(a). Applicants respectfully submit that the Examiner has failed to properly establish the essential elements needed for a *prima facie* rejection due to clear errors in the Examiner's rejections.

REMARKS

I. Claims 1-3 and 5-14 are not obvious in view of *Fraser* (U.S. Patent No. 3,517,546) and are allowable.

Claims 1-3 and 5-14 stand rejected under 35 U.S.C. §103 as being unpatentable over *Fraser*. However, *Fraser* fails to disclose each and every element as set forth in the claims. *Fraser* therefore cannot render the claims obvious.

Claim 1 recites a method in which an express act involves "generating data representative of an acoustical characteristic of the pipeline from the interaction between the pipeline pig and the inner diameter of the pipeline." *Fraser* discloses an apparatus in the form of a leak detector that is not used to perform the claimed methods. The leak detector itself cannot teach this method limitation or any other claimed action without a description of the detector's use that corresponds to the claimed actions, or at least some motivation or suggestion to use the detector taught in *Fraser* to perform the methods as claimed. However, such a teaching is missing, and the Examiner fails to establish any motivation or suggestion to use the detector in *Fraser* as recited in the claims.

First, the Examiner selectively truncates a citation from *Fraser* to impermissibly alter what is actually taught therein. Column 4, lines 2-4, in *Fraser* states that "[t]he pig, as it passes through the pipeline, will *detect all noises that occur in the pipeline above the set pass band*." In other words, the pig **does not** detect all noises that occur but rather only "frequencies above 30,000 Hz."

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Secondly, whether noise occurs, is generated or even is "detected" fails to meet the claimed limitation of "generating data." Data is "a body of facts; information" as defined by *Dictionary.com Unabridged* (v 1.1). at <http://dictionary.reference.com/browse/data>. While some form of detection may be a prerequisite for generating a body of facts in some circumstances, this act of generating data is distinct from mere detection. With respect to *Fraser*, "the travel noise generated on the front of the pig is substantially equal to that generated behind the pig and thus the travel noises will be cancelled in the detecting circuit," while "the noises due to leakages will not be balanced in the detecting circuit and recordable signals will be recorded." Col. 4, lines 4-13.

Claim 1 further utilizes "the data" in an analysis action that includes "analyzing the data to determine the condition of the pipeline." The term "analyzing" means "to examine carefully and in detail so as to identify causes, key factors, possible results, etc.," as defined in *Dictionary.com Unabridged* (v 1.1). at <http://dictionary.reference.com/browse/analyzing>. Without any of the "data representative of an acoustical characteristic of the pipeline from the interaction" generated in the methods disclosed in *Fraser*, there inferentially cannot be any analysis in *Fraser* of this claimed data, as recited in claim 1. Furthermore, the Examiner states that if something "rejects frequencies below 30,000 Hz, the frequencies between 75 to 300 Hz are still analyzed." However, the Examiner misinterprets the term analyzing and hence the claimed limitation. This misinterpretation of an act that involves "analyzing the data to determine the condition of the pipeline" provides an illogical result since mere blind exclusion of 75 to 300 Hz (frequency range exemplarily used here since used by the Examiner) would fail to provide any information as to the condition of the pipe.

In contrast to the invention recited in claim 1, *Fraser* discloses the leak detector that detects *and records* only "high frequency noises that result from the leakage of fluid through a leak in the pipeline." See, Col. 4, lines 6-12. Moreover, travel noises in the method of *Fraser* are cancelled as described in column 4, lines 4-7. These travel noises are generated by the pig passing through the pipeline as it goes over welds or other obstructions. See, Col. 2, lines 14-16 and 39-42.

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The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2142. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP § 2143. Based on the foregoing, *Fraser* fails to teach, show or suggest each and every limitation of claim 1. Therefore, Applicants submit that claim 1 and all claims dependent thereon are allowable and request allowance thereof.

II. Claims 15, 37 and 41 are not anticipated by *Fraser* and are allowable.

Claims 15, 37 and 41 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Fraser*. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). With respect to claim 15, *Fraser* does not disclose "each and every element as set forth in the claim."

Specifically, *Fraser* does not disclose "generating data representative of the frequency response; and analyzing the data to give data representative of the condition of the pipeline, wherein analyzing the data comprises analyzing a frequency range between about 75 Hz and 300 Hz." As discussed in the above section with respect to the obviousness rejection of claim 1 in view of *Fraser*, the method taught in *Fraser* is missing any generation of data and analysis thereof in any frequency range below 30,000 Hz. Therefore, *Fraser* cannot anticipate claim 15 or any claim dependent thereon. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of the claims.

III. Dependent claims 38-40, 42 and 43 are not obvious in view of *Fraser* in combination with additional identified references and are allowable.

Claims 38 and 43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Fraser* in view of *Marsh et al.* (4,541,278). Claims 39 and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Fraser* (3,517,546) in view of *Lara*

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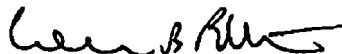
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(4,747,317). Claim 42 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Fraser* (3,517,546) in view of *Savard* (2003/0056309). Applicants submit that claims 38-40, 42 and 43 are allowable based at least on the traversal presented herein regarding the independent claims from which these claims depend. Accordingly, Applicants request withdrawal of the rejection and allowance of the claims.

Conclusion

Applicants believe that the foregoing discussion demonstrates the patentability of the present claims over the cited references. Accordingly, Applicants request that the Panel vacate the rejections and remand the matter to the Examiner with instructions to allow the present claims.

Respectfully submitted,



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